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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,398	02/20/2001	Claudia Conti	88265-412	2052

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 06/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/785,398

Applicant(s)
Conti et al.

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 25, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other: |

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1. Claims 1,9 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1,9 and 14, a range of " more than 40 seconds to at least 70" is confusing because applicant essentially claims two ranges within the same claim. The ranges are more than 40-70 and 70 and beyond; this is range within a range. It is not clear what is intended.

2. Claims 1,4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biggs et al in view of Negro (4629628).

Biggs et al disclose a wafer comprising flour, sucrose, invert sugar, fat, salt and lecithin. The wafer contain a food core selected form the group consisting of ice cream, fish, meat, vegetable, fruit, nuts, chocolate pieces and the like. The wafer may be coated with a barrier coating such as a fat or fat based coating. (See column 2)

Biggs et al do not disclose adding water, water in the amount claimed, sugar in the amount claimed, the flour is wheat flour and the flexible time at ambient temperature. Negro disclose formulations for wafer. The reference teaches that wheat flour is the most suitable for wafer and water is added to make the wafer batter. (See column 1)

While Biggs et al do not disclose the flour is wheat flour, it would have bee obvious to use wheat flour because it is well known in the art that whenever the term flour is used, it means wheat flour. However, even if Biggs et al do not intend for the flour to be wheat flour, it would have been obvious to one skilled in the art at the time of the invention to use wheat flour because

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it is well known wheat flour is the common flour used in making wafer and this is also shown by Negro. It would also have been obvious to add water to the Biggs et al composition to make a batter. It is well known that water or some other type of fluid is needed in order to make a batter and wafer is made from batter. This is well known in the art and also taught by Negro. It would have been obvious to one skilled in the art to add water in order to make a batter to be used in making the wafer. The amount of water used depends on the type of batter desired. If a thin batter is intended, it would have been obvious to use more water than a thicker batter. One skilled in the art can determine the appropriate amount of water through routine experimentation taking into consideration of the type of batter and the texture desired from such batter. As to the flexibility, the flexibility is obtained by using sucrose in combination with a reducing sugar. Claim 1 set forth two alternatives to obtain a wafer having the claimed flexibility. Since the Biggs et al wafer contains sucrose and reducing sugar, it obvious that the wafer will have the same flexibility.

3. Claims 2-3,9-20 are free of prior art because there is no disclosure or suggestion to add cereal grits to the wafer disclosed by Biggs et al and there is no disclosure or suggestion to change the ratio of sucrose:reducing sugar to the amount as claimed.

4. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can

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normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

June 13, 2003

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700